

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2502

Introduced by Assembly Member Brownley

February 19, 2010

An act to amend ~~Section 437c of the Code of Civil Procedure~~ Sections 1367.1 and 1367.4 of the Civil Code, relating to ~~civil actions~~ homeowners' associations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2502, as amended, Brownley. ~~Civil actions: summary judgment.~~
Homeowners' associations: delinquencies.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes a homeowners' association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, fees, reasonable costs of collection, attorney's fees, late charges, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied. Existing law provides that payments made by a homeowner to reduce the debt shall first be applied to the assessments owed, and may only be applied to fees, reasonable costs of collection, attorneys fees, late charges, and interest only after the assessments owed are paid in full.

This bill would clarify that the provisions that set forth the order in which payments are to be allocated apply to any agent or representative of the homeowners' association and to any 3rd party assigned to collect payment for purposes of collection of the debt. This bill would provide that a homeowner may not waive the right to have payments allocated in the order specified and would provide that any contract requiring a

homeowner to waive this right would be void and unenforceable. This bill would also require the homeowners' association, its agent and representatives, and any 3rd party assigned to collect payments for purposes of the collection of the debt are required to accept partial payments of the debt.

Existing law requires a homeowners' association, if requested by a homeowner, to meet with the board in special session, within 45 days of the request, to discuss a payment plan. Existing law provides that if there is no special session scheduled within the 45-day period, that the board may designate a committee to meet with the homeowner to discuss a payment plan within that time period.

This bill would, instead, if requested by the homeowner, require a meeting to discuss a payment plan to be held in an open session. This bill would only allow the board to designate a committee to meet with the homeowner if the homeowner authorizes the designation of that committee, and, if the homeowner does not authorize the designation of the committee, would require the meeting to take place at the next regularly scheduled board meeting. This bill would provide that the homeowners' association may not authorize an agent, representative, or any other third party to discuss or negotiate a payment plan without the consent of the homeowner and would require that all payment plans would be subject to the approval of the board at an open meeting of the board. This bill would also provide that, in the event the association assigns or pledges its right to collect payments or assessments to a financial institution, lender, or other 3rd party, that the 3rd party would be subject to the provisions of the act and, if the owner has entered into a payment plan with the homeowners' association, would require that 3rd party to conduct any collection procedures in accordance with the provisions of an existing payment plan.

Existing law provides that a homeowners' association may not collect a debt of an amount less than \$1,800, exclusive of specified charges, through judicial or nonjudicial foreclosure but provides that the homeowners' association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$1,800 or the assessments are more than 12 months delinquent.

The bill would, instead, provide that a homeowners' association may not collect a debt of an amount less than \$3,600, exclusive of specified charges, through judicial or nonjudicial foreclosure but would provide that the homeowners' association must either file a civil action in small

claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$3,600 or the assessments are more than 18 months delinquent.

~~Existing law sets forth the conditions and requirements for filing a motion for summary judgment, as specified. Existing law requires that notice of a motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty.~~

~~This bill would make technical, nonsubstantive changes in these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. (a) The Legislature finds and declares:*
2 *(1) The Davis-Stirling Common Interest Development Act was*
3 *enacted to provide protections to homeowners that have purchased*
4 *residences in common interest developments.*
5 *(2) The Davis-Stirling Common Interest Development Act*
6 *establishes procedures to be followed by homeowners' associations*
7 *in the collection of delinquencies of regular and special*
8 *assessments.*
9 *(3) Many homeowners' associations assign or pledge the*
10 *association's right to collect these delinquencies to third parties*
11 *who require the homeowner to enter into payment plans that*
12 *require the homeowner to waive his or her rights to the protections*
13 *provided by the Davis-Stirling Common Interest Development Act,*
14 *including the right to have all payments first applied to the*
15 *assessments owed.*
16 *(4) By waiving these rights many homeowners are coerced into*
17 *payment plans that require the payment to be first applied to costs*
18 *of collection, attorneys fees, late charges, and interest without*
19 *lowering the underlying assessment that serves as the basis for*
20 *computing these charges, thereby forcing the homeowner to sink*
21 *deeper into debt.*
22 *(b) It is the intent of the Legislature, by enacting this act, to*
23 *clarify and guarantee that the requirements of the Davis-Stirling*

1 *Common Interest Development Act, with respect to the collection*
2 *of delinquencies, shall apply to any agent or representative of the*
3 *homeowners' association and to any third party assigned to collect*
4 *delinquent assessments.*

5 *SEC. 2. Section 1367.1 of the Civil Code is amended to read:*

6 1367.1. (a) A regular or special assessment and any late
7 charges, reasonable fees and costs of collection, reasonable
8 attorney's fees, if any, and interest, if any, as determined in
9 accordance with Section 1366, shall be a debt of the owner of the
10 separate interest at the time the assessment or other sums are levied.
11 At least 30 days prior to recording a lien upon the separate interest
12 of the owner of record to collect a debt that is past due under this
13 subdivision, the association shall notify the owner of record in
14 writing by certified mail of the following:

15 (1) A general description of the collection and lien enforcement
16 procedures of the association and the method of calculation of the
17 amount, a statement that the owner of the separate interest has the
18 right to inspect the association records, pursuant to Section 8333
19 of the Corporations Code, and the following statement in 14-point
20 boldface type, if printed, or in capital letters, if typed:
21 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
22 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
23 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
24 COURT ACTION."

25 (2) An itemized statement of the charges owed by the owner,
26 including items on the statement which indicate the amount of any
27 delinquent assessments, the fees and reasonable costs of collection,
28 reasonable attorney's fees, any late charges, and interest, if any.

29 (3) A statement that the owner shall not be liable to pay the
30 charges, interest, and costs of collection, if it is determined the
31 assessment was paid on time to the association.

32 (4) The right to request a meeting with the board as provided
33 by paragraph (3) of subdivision (c).

34 (5) The right to dispute the assessment debt by submitting a
35 written request for dispute resolution to the association pursuant
36 to the association's "meet and confer" program required in Article
37 5 (commencing with Section 1363.810) of Chapter 4.

38 (6) The right to request alternative dispute resolution with a
39 neutral third party pursuant to Article 2 (commencing with Section
40 1369.510) of Chapter 7 before the association may initiate

1 foreclosure against the owner's separate interest, except that
2 binding arbitration shall not be available if the association intends
3 to initiate a judicial foreclosure.

4 (b) (1) Any payments made by the owner of a separate interest
5 toward the debt set forth, as required in subdivision (a), *whether*
6 *made to the association, an agent or representative of the*
7 *association, or to a third party assigned to collect any unpaid debt,*
8 shall first be applied to the assessments owed, and, only after the
9 assessments owed are paid in full shall the payments be applied
10 to the fees and costs of collection, attorney's fees, late charges, or
11 interest. When an owner makes a payment, the owner may request
12 a receipt and the association, *its agent or representative, or a third*
13 *party assigned to accept payment for purposes of collection of the*
14 *debt* shall provide it. The receipt shall indicate the date of payment
15 and the person who received it. The association shall provide a
16 mailing address for overnight payment of assessments.

17 (2) *The association, an agent or representative of the*
18 *association, or a third party assigned to collect payment for*
19 *purposes of collection of the debt shall not refuse to accept partial*
20 *payment of the debt.*

21 (3) *The provisions set forth in paragraph (1), regarding the*
22 *order in which the payments made are to be allocated, shall apply*
23 *to any agent or representative of the association and to any third*
24 *party that accepts payment for purposes of collection of the debt.*
25 *An owner shall not waive the provisions of paragraph (1) that set*
26 *forth the order of the allocation of payments made toward the debt.*
27 *Any contract or payment plan that requires a waiver of the*
28 *allocation of payments made, as set forth in paragraph (1), shall*
29 *be void and unenforceable.*

30 (c) (1) (A) Prior to recording a lien for delinquent assessments,
31 an association shall offer the owner and, if so requested by the
32 owner, participate in dispute resolution pursuant to the association's
33 "meet and confer" program required in Article 5 (commencing
34 with Section 1363.810) of Chapter 4.

35 (B) Prior to initiating a foreclosure for delinquent assessments,
36 an association shall offer the owner and, if so requested by the
37 owner, shall participate in dispute resolution pursuant to the
38 association's "meet and confer" program required in Article 5
39 (commencing with Section 1363.810) of Chapter 4 or alternative
40 dispute resolution with a neutral third party pursuant to Article 2

1 (commencing with Section 1369.510) of Chapter 7. The decision
2 to pursue dispute resolution or a particular type of alternative
3 dispute resolution shall be the choice of the owner, except that
4 binding arbitration shall not be available if the association intends
5 to initiate a judicial foreclosure.

6 (2) For liens recorded on or after January 1, 2006, the decision
7 to record a lien for delinquent assessments shall be made only by
8 the board of directors of the association and may not be delegated
9 to an agent of the association. The board shall approve the decision
10 by a majority vote of the board members in an open meeting. The
11 board shall record the vote in the minutes of that meeting.

12 (3) (A) An owner, other than an owner of any interest that is
13 described in Section 11212 of the Business and Professions Code
14 that is not otherwise exempt from this section pursuant to
15 subdivision (a) of Section 11211.7, may submit a written request
16 to meet with the board to discuss a payment plan for the debt
17 noticed pursuant to subdivision (a). The association shall provide
18 the owners the standards for payment plans, if any exist. The board
19 shall meet with the owner in executive session, *or if requested by*
20 *the owner, in an open meeting of the board*, within 45 days of the
21 postmark of the request, if the request is mailed within 15 days of
22 the date of the postmark of the notice, unless there is no regularly
23 scheduled board meeting within that period, in which case the
24 board, *if authorized by the owner*, may designate a committee of
25 one or more members to meet with the owner. ~~Payment—If the~~
26 ~~owner does not authorize the board to designate a committee to~~
27 ~~meet with the owner, the board shall meet with the owner at the~~
28 ~~next regularly scheduled board meeting. The board shall not,~~
29 ~~without the consent of the owner, authorize an agent or~~
30 ~~representative of the association or any other third party to discuss~~
31 ~~or negotiate a payment plan. All payment plans are subject to the~~
32 ~~approval of the board at an open meeting of the board.~~

33 (B) Payment plans may incorporate any assessments that accrue
34 during the payment plan period. Payment plans shall not impede
35 an association's ability to record a lien on the owner's separate
36 interest to secure payment of delinquent assessments. Additional
37 late fees shall not accrue during the payment plan period if the
38 owner is in compliance with the terms of the payment plan. In the
39 event of a default on any payment plan, the association may resume

1 its efforts to collect the delinquent assessments from the time prior
2 to entering into the payment plan.

3 (d) The amount of the assessment, plus any costs of collection,
4 late charges, and interest assessed in accordance with Section 1366,
5 shall be a lien on the owner's separate interest in the common
6 interest development from and after the time the association causes
7 to be recorded with the county recorder of the county in which the
8 separate interest is located, a notice of delinquent assessment,
9 which shall state the amount of the assessment and other sums
10 imposed in accordance with Section 1366, a legal description of
11 the owner's separate interest in the common interest development
12 against which the assessment and other sums are levied, and the
13 name of the record owner of the separate interest in the common
14 interest development against which the lien is imposed. The
15 itemized statement of the charges owed by the owner described in
16 paragraph (2) of subdivision (a) shall be recorded together with
17 the notice of delinquent assessment. In order for the lien to be
18 enforced by nonjudicial foreclosure as provided in subdivision (g),
19 the notice of delinquent assessment shall state the name and address
20 of the trustee authorized by the association to enforce the lien by
21 sale. The notice of delinquent assessment shall be signed by the
22 person designated in the declaration or by the association for that
23 purpose, or if no one is designated, by the president of the
24 association. A copy of the recorded notice of delinquent assessment
25 shall be mailed by certified mail to every person whose name is
26 shown as an owner of the separate interest in the association's
27 records, and the notice shall be mailed no later than 10 calendar
28 days after recordation. Within 21 days of the payment of the sums
29 specified in the notice of delinquent assessment, the association
30 shall record or cause to be recorded in the office of the county
31 recorder in which the notice of delinquent assessment is recorded
32 a lien release or notice of rescission and provide the owner of the
33 separate interest a copy of the lien release or notice that the
34 delinquent assessment has been satisfied. A monetary charge
35 imposed by the association as a means of reimbursing the
36 association for costs incurred by the association in the repair of
37 damage to common areas and facilities for which the member or
38 the member's guests or tenants were responsible may become a
39 lien against the member's separate interest enforceable by the sale
40 of the interest under Sections 2924, 2924b, and 2924c, provided

1 the authority to impose a lien is set forth in the governing
2 documents. It is the intent of the Legislature not to contravene
3 Section 2792.26 of Title 10 of the California Code of Regulations,
4 as that section appeared on January 1, 1996, for associations of
5 subdivisions that are being sold under authority of a subdivision
6 public report, pursuant to Part 2 (commencing with Section 11000)
7 of Division 4 of the Business and Professions Code.

8 (e) Except as indicated in subdivision (d), a monetary penalty
9 imposed by the association as a disciplinary measure for failure
10 of a member to comply with the governing instruments, except for
11 the late payments, may not be characterized nor treated in the
12 governing instruments as an assessment that may become a lien
13 against the member's subdivision separate interest enforceable by
14 the sale of the interest under Sections 2924, 2924b, and 2924c.

15 (f) A lien created pursuant to subdivision (d) shall be prior to
16 all other liens recorded subsequent to the notice of assessment,
17 except that the declaration may provide for the subordination
18 thereof to any other liens and encumbrances.

19 (g) (1) An association may not voluntarily assign or pledge
20 the association's right to collect payments or assessments, or to
21 enforce or foreclose a lien to a third party, except when the
22 assignment or pledge is made to a financial institution or lender
23 chartered or licensed under federal or state law, when acting within
24 the scope of that charter or license, as security for a loan obtained
25 by the association; however, the foregoing provision may not
26 restrict the right or ability of an association to assign any unpaid
27 obligations of a former member to a third party for purposes of
28 collection. ~~Subject~~ *If the association assigns or pledges its right*
29 *to collect payments or assessments to a financial institution, lender,*
30 *or other third party, that the third party shall be subject to the*
31 *provisions of this section and, if the owner has entered into a*
32 *payment plan with the association, that the third party shall also*
33 *conduct any collection procedures in accordance with the*
34 *provisions of that payment plan.*

35 (2) *Subject* to the limitations of this subdivision, after the
36 expiration of 30 days following the recording of a lien created
37 pursuant to subdivision (d), the lien may be enforced in any manner
38 permitted by law, including sale by the court, sale by the trustee
39 designated in the notice of delinquent assessment, or sale by a
40 trustee substituted pursuant to Section 2934a. Any sale by the

trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, ~~plus~~

~~the~~ *plus the* cost of service for either of the following:

(1)

(A) The notice of default pursuant to subdivision (j) of Section 1367.1.

(2)

(B) The decision of the board to foreclose upon the separate interest of an owner as described in paragraph (3) of subdivision (c) of Section 1367.4.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner's legal representative shall be the person whose name is shown as the owner of a separate interest in the association's records, unless another person has been previously designated by the owner as his or her legal representative in writing and mailed to the association in a manner that indicates that the association has received it.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association

1 shall notify owners of their right to submit secondary addresses to
2 the association, at the time the association issues the pro forma
3 operating budget pursuant to Section 1365. The owner's request
4 shall be in writing and shall be mailed to the association in a
5 manner that shall indicate the association has received it. The
6 owner may identify or change a secondary address at any time,
7 provided that, if a secondary address is identified or changed during
8 the collection process, the association shall only be required to
9 send notices to the indicated secondary address from the point the
10 association receives the request.

11 (l) (1) An association that fails to comply with the procedures
12 set forth in this section shall, prior to recording a lien, recommence
13 the required notice process.

14 (2) Any costs associated with recommencing the notice process
15 shall be borne by the association and not by the owner of a separate
16 interest.

17 (m) This section only applies to liens recorded on or after
18 January 1, 2003.

19 (n) This section is subordinate to, and shall be interpreted in
20 conformity with, Section 1367.4.

21 *SEC. 3. Section 1367.4 of the Civil Code is amended to read:*

22 1367.4. (a) Notwithstanding any law or any provisions of the
23 governing documents to the contrary, this section shall apply to
24 debts for assessments that arise on and after January 1, 2006.

25 (b) An association that seeks to collect delinquent regular or
26 special assessments of an amount less than ~~one thousand eight~~
27 ~~hundred dollars (\$1,800)~~ *three thousand six hundred dollars*
28 *(\$3,600)*, not including any accelerated assessments, late charges,
29 fees and costs of collection, attorney's fees, or interest, may not
30 collect that debt through judicial or nonjudicial foreclosure, but
31 may attempt to collect or secure that debt in any of the following
32 ways:

33 (1) By a civil action in small claims court, pursuant to Chapter
34 5.5 (commencing with Section 116.110) of Title 1 of the Code of
35 Civil Procedure. An association that chooses to proceed by an
36 action in small claims court, and prevails, may enforce the
37 judgment as permitted under Article 8 (commencing with Section
38 116.810) of Title 1 of the Code of Civil Procedure. The amount
39 that may be recovered in small claims court to collect upon a debt

1 for delinquent assessments may not exceed the jurisdictional limits
2 of the small claims court and shall be the sum of the following:

3 (A) The amount owed as of the date of filing the complaint in
4 the small claims court proceeding.

5 (B) In the discretion of the court, an additional amount to that
6 described in subparagraph (A) equal to the amount owed for the
7 period from the date the complaint is filed until satisfaction of the
8 judgment, which total amount may include accruing unpaid
9 assessments and any reasonable late charges, fees and costs of
10 collection, attorney's fees, and interest, up to the jurisdictional
11 limits of the small claims court.

12 (2) By recording a lien on the owner's separate interest upon
13 which the association may not foreclose until the amount of the
14 delinquent assessments secured by the lien, exclusive of any
15 accelerated assessments, late charges, fees and costs of collection,
16 attorney's fees, or interest, equals or exceeds ~~one thousand eight~~
17 ~~hundred dollars (\$1,800)~~ *three thousand six hundred dollars*
18 *(\$3,600)* or the assessments secured by the lien are more than ~~12~~
19 *18* months delinquent. An association that chooses to record a lien
20 under these provisions, prior to recording the lien, shall offer the
21 owner and, if so requested by the owner, participate in dispute
22 resolution as set forth in Article 5 (commencing with Section
23 1363.810) of Chapter 4.

24 (3) Any other manner provided by law, except for judicial or
25 nonjudicial foreclosure.

26 (c) An association that seeks to collect delinquent regular or
27 special assessments of an amount of ~~one thousand eight hundred~~
28 ~~dollars (\$1,800)~~ *three thousand six hundred dollars (\$3,600)* or
29 more, not including any accelerated assessments, late charges, fees
30 and costs of collection, attorney's fees, or interest, or any
31 assessments secured by the lien that are more than ~~12~~ *18* months
32 delinquent, may use judicial or nonjudicial foreclosure subject to
33 the following conditions:

34 (1) Prior to initiating a foreclosure on an owner's separate
35 interest, the association shall offer the owner and, if so requested
36 by the owner, participate in dispute resolution pursuant to the
37 association's "meet and confer" program required in Article 5
38 (commencing with Section 1363.810) of Chapter 4 or alternative
39 dispute resolution as set forth in Article 2 (commencing with
40 Section 1369.510) of Chapter 7. The decision to pursue dispute

1 resolution or a particular type of alternative dispute resolution shall
2 be the choice of the owner, except that binding arbitration shall
3 not be available if the association intends to initiate a judicial
4 foreclosure.

5 (2) The decision to initiate foreclosure of a lien for delinquent
6 assessments that has been validly recorded shall be made only by
7 the board of directors of the association and may not be delegated
8 to an agent of the association. The board shall approve the decision
9 by a majority vote of the board members in an executive session.
10 The board shall record the vote in the minutes of the next meeting
11 of the board open to all members. The board shall maintain the
12 confidentiality of the owner or owners of the separate interest by
13 identifying the matter in the minutes by the parcel number of the
14 property, rather than the name of the owner or owners. A board
15 vote to approve foreclosure of a lien shall take place at least 30
16 days prior to any public sale.

17 (3) The board shall provide notice by personal service in
18 accordance with the manner of service of summons in Article 3
19 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
20 2 of the Code of Civil Procedure to an owner of a separate interest
21 who occupies the separate interest or to the owner's legal
22 representative, if the board votes to foreclose upon the separate
23 interest. The board shall provide written notice to an owner of a
24 separate interest who does not occupy the separate interest by
25 first-class mail, postage prepaid, at the most current address shown
26 on the books of the association. In the absence of written
27 notification by the owner to the association, the address of the
28 owner's separate interest may be treated as the owner's mailing
29 address.

30 (4) A nonjudicial foreclosure by an association to collect upon
31 a debt for delinquent assessments shall be subject to a right of
32 redemption. The redemption period within which the separate
33 interest may be redeemed from a foreclosure sale under this
34 paragraph ends 90 days after the sale. In addition to the
35 requirements of Section 2924f, a notice of sale in connection with
36 an association's foreclosure of a separate interest in a common
37 interest development shall include a statement that the property is
38 being sold subject to the right of redemption created in this
39 paragraph.

1 (d) The limitation on foreclosure of assessment liens for amounts
2 under the stated minimum in this section does not apply to
3 assessments owed by owners of separate interests in timeshare
4 estates, as defined in subdivision (x) of Section 11112 of the
5 Business and Professions Code, or to assessments owed by
6 developers.

7 ~~SECTION 1. Section 437c of the Code of Civil Procedure is~~
8 ~~amended to read:~~

9 ~~437c. (a) A party may move for summary judgment in an~~
10 ~~action or proceeding if it is contended that the action has no merit~~
11 ~~or that there is no defense to the action or proceeding. The motion~~
12 ~~may be made at any time after 60 days have elapsed since the~~
13 ~~general appearance in the action or proceeding of each party against~~
14 ~~whom the motion is directed or at any earlier time after the general~~
15 ~~appearance that the court, with or without notice and upon good~~
16 ~~cause shown, may direct. Notice of the motion and supporting~~
17 ~~papers shall be served on all other parties to the action at least 75~~
18 ~~days before the time appointed for hearing. However, if the notice~~
19 ~~is served by mail, the required 75-day period of notice shall be~~
20 ~~increased by five days if the place of address is within the State~~
21 ~~of California, 10 days if the place of address is outside the State~~
22 ~~of California but within the United States, and 20 days if the place~~
23 ~~of address is outside the United States, and if the notice is served~~
24 ~~by facsimile transmission, Express Mail, or another method of~~
25 ~~delivery providing for overnight delivery, the required 75-day~~
26 ~~period of notice shall be increased by two court days. The motion~~
27 ~~shall be heard no later than 30 days before the date of trial, unless~~
28 ~~the court for good cause orders otherwise. The filing of the motion~~
29 ~~shall not extend the time within which a party must otherwise file~~
30 ~~a responsive pleading.~~

31 ~~(b) (1) The motion shall be supported by affidavits, declarations,~~
32 ~~admissions, answers to interrogatories, depositions, and matters~~
33 ~~of which judicial notice shall or may be taken. The supporting~~
34 ~~papers shall include a separate statement setting forth plainly and~~
35 ~~concisely all material facts that the moving party contends are~~
36 ~~undisputed. Each of the material facts stated shall be followed by~~
37 ~~a reference to the supporting evidence. The failure to comply with~~
38 ~~this requirement of a separate statement may in the court's~~
39 ~~discretion constitute a sufficient ground for denial of the motion.~~

~~(2) Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.~~

~~(3) The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.~~

~~(4) Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.~~

~~(5) Evidentiary objections not made at the hearing shall be deemed waived.~~

~~(6) Except for subdivision (c) of Section 1005 relating to the method of service of opposition and reply papers, Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.~~

~~(7) Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.~~

~~(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted~~

1 by other inferences or evidence, which raise a triable issue as to
2 any material fact.

3 (d) ~~Supporting and opposing affidavits or declarations shall be~~
4 ~~made by any person on personal knowledge, shall set forth~~
5 ~~admissible evidence, and shall show affirmatively that the affiant~~
6 ~~is competent to testify to the matters stated in the affidavits or~~
7 ~~declarations. Any objections based on the failure to comply with~~
8 ~~the requirements of this subdivision shall be made at the hearing~~
9 ~~or shall be deemed waived.~~

10 (e) ~~If a party is otherwise entitled to a summary judgment~~
11 ~~pursuant to this section, summary judgment may not be denied on~~
12 ~~grounds of credibility or for want of cross-examination of witnesses~~
13 ~~furnishing affidavits or declarations in support of the summary~~
14 ~~judgment, except that summary judgment may be denied in the~~
15 ~~discretion of the court, where the only proof of a material fact~~
16 ~~offered in support of the summary judgment is an affidavit or~~
17 ~~declaration made by an individual who was the sole witness to that~~
18 ~~fact; or where a material fact is an individual's state of mind, or~~
19 ~~lack thereof, and that fact is sought to be established solely by the~~
20 ~~individual's affirmation thereof.~~

21 (f) (1) ~~A party may move for summary adjudication as to one~~
22 ~~or more causes of action within an action, one or more affirmative~~
23 ~~defenses, one or more claims for damages, or one or more issues~~
24 ~~of duty, if that party contends that the cause of action has no merit~~
25 ~~or that there is no affirmative defense thereto, or that there is no~~
26 ~~merit to an affirmative defense as to any cause of action, or both,~~
27 ~~or that there is no merit to a claim for damages, as specified in~~
28 ~~Section 3294 of the Civil Code, or that one or more defendants~~
29 ~~either owed or did not owe a duty to the plaintiff or plaintiffs. A~~
30 ~~motion for summary adjudication shall be granted only if it~~
31 ~~completely disposes of a cause of action, an affirmative defense,~~
32 ~~a claim for damages, or an issue of duty.~~

33 (2) ~~A motion for summary adjudication may be made by itself~~
34 ~~or as an alternative to a motion for summary judgment and shall~~
35 ~~proceed in all procedural respects as a motion for summary~~
36 ~~judgment. However, a party may not move for summary judgment~~
37 ~~based on issues asserted in a prior motion for summary adjudication~~
38 ~~and denied by the court, unless that party establishes to the~~
39 ~~satisfaction of the court, newly discovered facts or circumstances~~

1 or a change of law supporting the issues reasserted in the summary
2 judgment motion.

3 ~~(g) Upon the denial of a motion for summary judgment, on the~~
4 ~~ground that there is a triable issue as to one or more material facts,~~
5 ~~the court shall, by written or oral order, specify one or more~~
6 ~~material facts raised by the motion as to which the court has~~
7 ~~determined there exists a triable controversy. This determination~~
8 ~~shall specifically refer to the evidence proffered in support of and~~
9 ~~in opposition to the motion that indicates that a triable controversy~~
10 ~~exists. Upon the grant of a motion for summary judgment, on the~~
11 ~~ground that there is no triable issue of material fact, the court shall,~~
12 ~~by written or oral order, specify the reasons for its determination.~~
13 ~~The order shall specifically refer to the evidence proffered in~~
14 ~~support of, and if applicable in opposition to, the motion that~~
15 ~~indicates that no triable issue exists. The court shall also state its~~
16 ~~reasons for any other determination. The court shall record its~~
17 ~~determination by court reporter or written order.~~

18 ~~(h) If it appears from the affidavits submitted in opposition to~~
19 ~~a motion for summary judgment or summary adjudication or both~~
20 ~~that facts essential to justify opposition may exist but cannot, for~~
21 ~~reasons stated, then be presented, the court shall deny the motion,~~
22 ~~or order a continuance to permit affidavits to be obtained or~~
23 ~~discovery to be had or may make any other order as may be just.~~
24 ~~The application to continue the motion to obtain necessary~~
25 ~~discovery may also be made by ex parte motion at any time on or~~
26 ~~before the date the opposition response to the motion is due.~~

27 ~~(i) If, after granting a continuance to allow specified additional~~
28 ~~discovery, the court determines that the party seeking summary~~
29 ~~judgment has unreasonably failed to allow the discovery to be~~
30 ~~conducted, the court shall grant a continuance to permit the~~
31 ~~discovery to go forward or deny the motion for summary judgment~~
32 ~~or summary adjudication. This section does not affect or limit the~~
33 ~~ability of any party to compel discovery under the Civil Discovery~~
34 ~~Act (Title 4 (commencing with Section 2016.010) of Part 4).~~

35 ~~(j) If the court determines at any time that any of the affidavits~~
36 ~~are presented in bad faith or solely for purposes of delay, the court~~
37 ~~shall order the party presenting the affidavits to pay the other party~~
38 ~~the amount of the reasonable expenses that the filing of the~~
39 ~~affidavits caused the other party to incur. Sanctions may not be~~
40 ~~imposed pursuant to this subdivision, except on notice contained~~

1 in a party's papers, or on the court's own noticed motion, and after
2 an opportunity to be heard.

3 ~~(k) Except when a separate judgment may properly be awarded~~
4 ~~in the action, no final judgment may be entered on a motion for~~
5 ~~summary judgment prior to the termination of the action, but the~~
6 ~~final judgment shall, in addition to any matters determined in the~~
7 ~~action, award judgment as established by the summary proceeding~~
8 ~~herein provided for.~~

9 ~~(l) In actions that arise out of an injury to the person or to~~
10 ~~property, if a motion for summary judgment was granted on the~~
11 ~~basis that the defendant was without fault, no other defendant~~
12 ~~during trial, over plaintiff's objection, may attempt to attribute~~
13 ~~fault to or comment on the absence or involvement of the defendant~~
14 ~~who was granted the motion.~~

15 ~~(m) (1) A summary judgment entered under this section is an~~
16 ~~appealable judgment as in other cases. Upon entry of any order~~
17 ~~pursuant to this section, except the entry of summary judgment, a~~
18 ~~party may, within 20 days after service upon him or her of a written~~
19 ~~notice of entry of the order, petition an appropriate reviewing court~~
20 ~~for a peremptory writ. If the notice is served by mail, the initial~~
21 ~~period within which to file the petition shall be increased by five~~
22 ~~days if the place of address is within the State of California, 10~~
23 ~~days if the place of address is outside the State of California but~~
24 ~~within the United States, and 20 days if the place of address is~~
25 ~~outside the United States. If the notice is served by facsimile~~
26 ~~transmission, Express Mail, or another method of delivery~~
27 ~~providing for overnight delivery, the initial period within which~~
28 ~~to file the petition shall be increased by two court days. The~~
29 ~~superior court may, for good cause, and prior to the expiration of~~
30 ~~the initial period, extend the time for one additional period not to~~
31 ~~exceed 10 days.~~

32 ~~(2) Before a reviewing court affirms an order granting summary~~
33 ~~judgment or summary adjudication on a ground not relied upon~~
34 ~~by the trial court, the reviewing court shall afford the parties an~~
35 ~~opportunity to present their views on the issue by submitting~~
36 ~~supplemental briefs. The supplemental briefing may include an~~
37 ~~argument that additional evidence relating to that ground exists,~~
38 ~~but that the party has not had an adequate opportunity to present~~
39 ~~the evidence or to conduct discovery on the issue. The court may~~
40 ~~reverse or remand based upon the supplemental briefing to allow~~

1 the parties to present additional evidence or to conduct discovery
2 on the issue. If the court fails to allow supplemental briefing, a
3 rehearing shall be ordered upon timely petition of any party.

4 (n) (1) If a motion for summary adjudication is granted, at the
5 trial of the action, the cause or causes of action within the action,
6 affirmative defense or defenses, claim for damages, or issue or
7 issues of duty as to the motion that has been granted shall be
8 deemed to be established and the action shall proceed as to the
9 cause or causes of action, affirmative defense or defenses, claim
10 for damages, or issue or issues of duty remaining.

11 (2) In the trial of the action, the fact that a motion for summary
12 adjudication is granted as to one or more causes of action,
13 affirmative defenses, claims for damages, or issues of duty within
14 the action shall not operate to bar any cause of action, affirmative
15 defense, claim for damages, or issue of duty as to which summary
16 adjudication was either not sought or denied.

17 (3) In the trial of an action, neither a party, nor a witness, nor
18 the court shall comment upon the grant or denial of a motion for
19 summary adjudication to a jury.

20 (o) A cause of action has no merit if either of the following
21 exists:

22 (1) One or more of the elements of the cause of action cannot
23 be separately established, even if that element is separately pleaded.

24 (2) A defendant establishes an affirmative defense to that cause
25 of action.

26 (p) For purposes of motions for summary judgment and
27 summary adjudication:

28 (1) A plaintiff or cross-complainant has met his or her burden
29 of showing that there is no defense to a cause of action if that party
30 has proved each element of the cause of action entitling the party
31 to judgment on that cause of action. Once the plaintiff or
32 cross-complainant has met that burden, the burden shifts to the
33 defendant or cross-defendant to show that a triable issue of one or
34 more material facts exists as to that cause of action or a defense
35 thereto. The defendant or cross-defendant may not rely upon the
36 mere allegations or denials of its pleadings to show that a triable
37 issue of material fact exists but, instead, shall set forth the specific
38 facts showing that a triable issue of material fact exists as to that
39 cause of action or a defense thereto.

1 ~~(2) A defendant or cross-defendant has met his or her burden~~
2 ~~of showing that a cause of action has no merit if that party has~~
3 ~~shown that one or more elements of the cause of action, even if~~
4 ~~not separately pleaded, cannot be established, or that there is a~~
5 ~~complete defense to that cause of action. Once the defendant or~~
6 ~~cross-defendant has met that burden, the burden shifts to the~~
7 ~~plaintiff or cross-complainant to show that a triable issue of one~~
8 ~~or more material facts exists as to that cause of action or a defense~~
9 ~~thereto. The plaintiff or cross-complainant may not rely upon the~~
10 ~~mere allegations or denials of its pleadings to show that a triable~~
11 ~~issue of material fact exists but, instead, shall set forth the specific~~
12 ~~facts showing that a triable issue of material fact exists as to that~~
13 ~~cause of action or a defense thereto.~~

14 ~~(q) This section does not extend the period for trial provided by~~
15 ~~Section 1170.5.~~

16 ~~(r) Subdivisions (a) and (b) do not apply to actions brought~~
17 ~~pursuant to Chapter 4 (commencing with Section 1159) of Title 3~~
18 ~~of Part 3.~~

19 ~~(s) For the purposes of this section, a change in law does not~~
20 ~~include a later enacted statute without retroactive application.~~